

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee's authorized leave or other authorized absence from regular duties on the carrier's aircraft in order to perform services on behalf of the employee's airline union shall be subject to the income tax laws of only the following:

(A) The State or political subdivision of the State that is the residence of the employee.

(B) The State or political subdivision of the State in which the employee's scheduled flight time would have been more than 50 percent of the employee's total scheduled flight time for the calendar year had the employee been engaged full time in the performance of regularly assigned duties on the carrier's aircraft.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1111; Pub. L. 103-305, title I, §112(e), title II, §208, Aug. 23, 1994, 108 Stat. 1576, 1588; Pub. L. 104-264, title I, §149(b), Oct. 9, 1996, 110 Stat. 3226; Pub. L. 104-287, §5(66), Oct. 11, 1996, 110 Stat. 3395.)

HISTORICAL AND REVISION NOTES PUB. L. 103-272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40116(a)	49 App.:1513(d)(2)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(d); added Sept. 3, 1982, Pub. L. 97-248, §532(b), 96 Stat. 701.
	49 App.:1513(f) (words in parentheses).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(f); added Nov. 5, 1990, Pub. L. 101-508, §9125, 104 Stat. 1388-370.
40116(b)	49 App.:1513(a).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(a); added June 18, 1973, Pub. L. 93-44, §7(a), 87 Stat. 90; Nov. 5, 1990, Pub. L. 101-508, §9110(1), 104 Stat. 1388-357.
40116(c)	49 App.:1513(f) (less words in parentheses).	
40116(d)	49 App.:1513(d)(1), (2)(A)-(D), (3).	
40116(e)	49 App.:1513(b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1113(b); added June 18, 1973, Pub. L. 93-44, §7(a), 87 Stat. 90; Sept. 3, 1982, Pub. L. 97-248, §532(a), 96 Stat. 701.
40116(f) (1)(A), (B).	49 App.:1512(c).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1112; added Dec. 23, 1970, Pub. L. 91-569, §4(a), 84 Stat. 1502; restated Feb. 18, 1980, Pub. L. 96-193, §402, 94 Stat. 57.
40116(f) (1)(C).	49 App.:1512(b).	
40116(f)(2) ...	49 App.:1512(a).	

Subsection (a) is made applicable to subsections (b) and (e) of this section to avoid having to repeat the term being defined. In subsection (a), the words "Commonwealth of Puerto Rico, the Virgin Islands, Guam" are omitted as surplus because of the definition of "territory or possession of the United States" in section 40102(a) of the revised title. The word "authority" is substituted for "agencies" for consistency in the re-

vised title and with other titles of the United States Code.

In subsection (b), before clause (1), reference to 49 App.:1513(f), restated as subsection (c) of this section, is added for clarity. The words "directly or indirectly" are omitted as surplus. The text of 49 App.:1513(a) (words after "subsection (e) and") is omitted as surplus.

In subsections (d)(2)(A), before clause (i), and (f)(1)(C) and (2), the word "political" is added for consistency in the revised title and with other titles of the Code.

In subsection (f)(1)(A), the word "pay" is substituted for "compensation" for consistency in the revised title and with chapter 55 of title 5, United States Code. The words "rendered by the employee in the performance of his duties and shall include wages and salary" are omitted as surplus.

In subsection (f)(1)(B), the words "means a State of the United States" are substituted for "also means" for clarity.

In subsection (f)(1)(C), the words "of a State" are added for clarity.

In subsection (f)(2), before clause (A), the words "as such an employee" are omitted as surplus.

PUB. L. 104-287

This amends 49:40116(d)(2)(A)(iv) to conform to the style of title 49 and to set out the effective date for this clause.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-264, in introductory provisions, substituted "a State, a" for "a State or" and inserted ", and any person that has purchased or leased an airport under section 47134 of this title" after "of a State".

Subsec. (d)(2)(A)(iv). Pub. L. 104-287, which directed substitution of "August 23, 1994" for "the date of enactment of this clause", was executed by making the substitution for "the date of the enactment of this clause" to reflect the probable intent of Congress.

Pub. L. 104-287 substituted "levy" for "Levy".

1994—Subsec. (d)(2)(A)(iv). Pub. L. 103-305, §112(e), added cl. (iv).

Subsec. (f)(3). Pub. L. 103-305, §208, added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

§ 40117. Passenger facility fees

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms "airport", "commercial service airport", and "public agency" have the meaning those terms have under section 47102.

(2) ELIGIBLE AGENCY.—The term "eligible agency" means a public agency that controls a commercial service airport.

(3) ELIGIBLE AIRPORT-RELATED PROJECT.—The term "eligible airport-related project" means any of the following projects:

(A) A project for airport development or airport planning under subchapter I of chapter 471.

(B) A project for terminal development described in section 47110(d).

(C) A project for costs of terminal development referred to in subparagraph (B) incurred after August 1, 1986, at an airport

that did not have more than .25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997.

(D) A project for airport noise capability planning under section 47505.

(E) A project to carry out noise compatibility measures eligible for assistance under section 47504, whether or not a program for those measures has been approved under section 47504.

(F) A project for constructing gates and related areas at which passengers board or exit aircraft. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(G) A project for converting vehicles and ground support equipment used at a commercial service airport to low-emission technology (as defined in section 47102) or to use cleaner burning conventional fuels, retrofitting of any such vehicles or equipment that are powered by a diesel or gasoline engine with emission control technologies certified or verified by the Environmental Protection Agency to reduce emissions, or acquiring for use at a commercial service airport vehicles and ground support equipment that include low-emission technology or use cleaner burning fuels if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139.

(4) GROUND SUPPORT EQUIPMENT.—The term “ground support equipment” means service and maintenance equipment used at an airport to support aeronautical operations and related activities.

(5) PASSENGER FACILITY FEE.—The term “passenger facility fee” means a fee imposed under this section.

(6) PASSENGER FACILITY REVENUE.—The term “passenger facility revenue” means revenue derived from a passenger facility fee.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility fee of \$1, \$2, or \$3 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out

the project, to be carried out in connection with the airport or any other airport the agency controls.

(2) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(3) A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(4) In lieu of authorizing a fee under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility fee of \$4.00 or \$4.50 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, if the Secretary finds—

(A) in the case of an airport that has more than .25 percent of the total number of annual boardings in the United States, that the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport; and

(B) that the project cannot be paid for from funds reasonably expected to be available for the programs referred to in section 48103.

(5) MAXIMUM COST FOR CERTAIN LOW-EMISSION TECHNOLOGY PROJECTS.—The maximum cost that may be financed by imposition of a passenger facility fee under this section for a project described in subsection (a)(3)(G) with respect to a vehicle or ground support equipment may not exceed the incremental amount of the project cost that is greater than the cost of acquiring a vehicle or equipment that is not low-emission and would be used for the same purpose, or the cost of low-emission retrofitting, as determined by the Secretary.

(6) DEBT SERVICE FOR CERTAIN PROJECTS.—In addition to the uses specified in paragraphs (1) and (4), the Secretary may authorize a passenger facility fee imposed under paragraph (1) or (4) to be used for making payments for debt service on indebtedness incurred to carry out at the airport a project that is not an eligible airport-related project if the Secretary determines that such use is necessary due to the financial need of the airport.

(7) NOISE MITIGATION FOR CERTAIN SCHOOLS.—

(A) IN GENERAL.—In addition to the uses specified in paragraphs (1), (4), and (6), the Secretary may authorize a passenger facility fee imposed under paragraph (1) or (4) at a large hub airport that is the subject of an amended judgment and final order in condemnation filed on January 7, 1980, by the Superior Court of the State of California for the county of Los Angeles, to be used for a project to carry out noise mitigation for a building, or for the replacement of a relocatable building with a permanent building, in the noise impacted area surrounding the airport at which

such building is used primarily for educational purposes, notwithstanding the air easement granted or any terms to the contrary in such judgment and final order, if—

(i) the Secretary determines that the building is adversely affected by airport noise;

(ii) the building is owned or chartered by the school district that was the plaintiff in case number 986,442 or 986,446, which was resolved by such judgment and final order;

(iii) the project is for a school identified in 1 of the settlement agreements effective February 16, 2005, between the airport and each of the school districts;

(iv) in the case of a project to replace a relocatable building with a permanent building, the eligible project costs are limited to the actual structural construction costs necessary to mitigate aircraft noise in instructional classrooms to an interior noise level meeting current standards of the Federal Aviation Administration; and

(v) the project otherwise meets the requirements of this section for authorization of a passenger facility fee.

(B) **ELIGIBLE PROJECT COSTS.**—In subparagraph (A)(iv), the term “eligible project costs” means the difference between the cost of standard school construction and the cost of construction necessary to mitigate classroom noise to the standards of the Federal Aviation Administration.

(c) **APPLICATIONS.**—(1) An eligible agency must submit to the Secretary an application for authority to impose a passenger facility fee. The application shall contain information and be in the form that the Secretary may require by regulation.

(2) Before submitting an application, the eligible agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The Secretary shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) The agency must provide written notice of individual projects being considered for financing by a passenger facility fee and the date and location of a meeting to present the projects to air carriers and foreign air carriers operating at the airport.

(B) Not later than 30 days after written notice is provided under subparagraph (A) of this paragraph, each air carrier and foreign air carrier operating at the airport must provide to the agency written notice of receipt of the notice. Failure of a carrier to provide the notice may be deemed certification of agreement with the project by the carrier under subparagraph (D) of this paragraph.

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

(D) Not later than 30 days after the meeting, each air carrier and foreign air carrier must

provide to the agency certification of agreement or disagreement with projects (or total plan for the projects). Failure to provide the certification is deemed certification of agreement with the project by the carrier. A certification of disagreement is void if it does not contain the reasons for the disagreement.

(E) The agency must include in its application or notice submitted under subparagraph (A) copies of all certifications of agreement or disagreement received under subparagraph (D).

(F) For the purpose of this section, an eligible agency providing notice and an opportunity for consultation to an air carrier or foreign air carrier is deemed to have satisfied the requirements of this paragraph if the eligible agency limits such notices and consultations to air carriers and foreign air carriers that have a significant business interest at the airport. In the subparagraph, the term “significant business interest” means an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport.

(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least the following under this paragraph:

(A) A requirement that the eligible agency provide public notice of intent to collect a passenger facility fee so as to inform those interested persons and agencies that may be affected. The public notice may include—

(i) publication in local newspapers of general circulation;

(ii) publication in other local media; and

(iii) posting the notice on the agency’s Internet website.

(B) A requirement for submission of public comments no sooner than 30 days, and no later than 45 days, after the date of the publication of the notice.

(C) A requirement that the agency include in its application or notice submitted under subparagraph (A) copies of all comments received under subparagraph (B).

(4) After receiving an application, the Secretary may provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) **LIMITATIONS ON APPROVING APPLICATIONS.**—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project;

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers;

(3) the application includes adequate justification for each of the specific projects; and

(4) in the case of an application to impose a fee of more than \$3.00 for an eligible surface transportation or terminal project, the agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(e) LIMITATIONS ON IMPOSING FEES.—(1) An eligible agency may impose a passenger facility fee only—

(A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II;

(C) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flier award coupon without monetary payment;

(D) on flights, including flight segments, between 2 or more points in Hawaii;

(E) in Alaska aboard an aircraft having a seating capacity of less than 60 passengers; and

(F) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement due to charter arrangements and payment by the Department of Defense.

(f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—(1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility fee or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assign-

ing new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not airport revenue for purposes of establishing a price under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a price payable by an air carrier or foreign air carrier using the facilities must at least equal the price paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(4) Passenger facility revenues that are held by an air carrier or an agent of the carrier after collection of a passenger facility fee constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the fee. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling fee or retention of interest collected on unremitted proceeds as may be allowed by the Secretary.

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring record-keeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect;

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable ex-

penses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation; and

(3) may permit an eligible agency to request that collection of a passenger facility fee be waived for—

(A) passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(B) passengers enplaned on a flight to an airport—

(i) that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(j) LIMITATION ON CERTAIN ACTIONS.—A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not tax, regulate, or prohibit or otherwise attempt to control in any manner, the imposition or collection of a passenger facility fee or the use of the revenue from the passenger facility fee.

(k) COMPETITION PLANS.—

(1) IN GENERAL.—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility fee under this section with respect to a covered airport (as such term is defined in section 47106(f)) unless the agency has submitted to the Secretary a written competition plan in accordance with such section. This subsection does not apply to passenger facility fees in effect before the date of the enactment of this subsection.

(2) SECRETARY SHALL ENSURE IMPLEMENTATION AND COMPLIANCE.—The Secretary shall review any plan submitted under paragraph (1) to ensure that it meets the requirements of this section, and shall review its implementation from time-to-time to ensure that each covered airport successfully implements its plan.

(l) PILOT PROGRAM FOR PASSENGER FACILITY FEE AUTHORIZATIONS AT NONHUB AIRPORTS.—

(1) IN GENERAL.—The Secretary shall establish a pilot program to test alternative procedures for authorizing eligible agencies for nonhub airports to impose passenger facility fees. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility fee under this section. For purposes of the pilot program, the procedures in this subsection shall apply instead of the procedures otherwise provided in this section.

(2) NOTICE AND OPPORTUNITY FOR CONSULTATION.—The eligible agency must provide reasonable notice and an opportunity for con-

sultation to air carriers and foreign air carriers in accordance with subsection (c)(2) and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

(3) NOTICE OF INTENTION.—The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility fee under this subsection. The notice shall include—

(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility fee is sought;

(B) the amount of revenue from passenger facility fees that is proposed to be collected for each project; and

(C) the level of the passenger facility fee that is proposed.

(4) ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF OBJECTION.—The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility fee under this subsection for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

(5) AUTHORITY TO IMPOSE FEE.—Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility fee in accordance with the terms of its notice under this subsection.

(6) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

(7) SUNSET.—This subsection shall cease to be effective beginning on April 1, 2010.

(8) ACKNOWLEDGEMENT NOT AN ORDER.—An acknowledgement issued under paragraph (4) shall not be considered an order issued by the Secretary for purposes of section 46110.

(m) FINANCIAL MANAGEMENT OF FEES.—

(1) HANDLING OF FEES.—A covered air carrier shall segregate in a separate account passenger facility revenue equal to the average monthly liability for fees collected under this section by such carrier or any of its agents for the benefit of the eligible agencies entitled to such revenue.

(2) TRUST FUND STATUS.—If a covered air carrier or its agent fails to segregate passenger facility revenue in violation of the subsection, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

(3) PROHIBITION.—A covered air carrier and its agents may not grant to any third party any security or other interest in passenger facility revenue.

(4) COMPENSATION TO ELIGIBLE ENTITIES.—A covered air carrier that fails to comply with any requirement of this subsection, or otherwise unnecessarily causes an eligible entity to expend funds, through litigation or otherwise, to recover or retain payment of passenger facility revenue to which the eligible entity is otherwise entitled shall be required to com-

pensate the eligible agency for the costs so incurred.

(5) INTEREST ON AMOUNTS.—A covered air carrier that collects passenger facility fees is entitled to receive the interest on passenger facility fee accounts if the accounts are established and maintained in compliance with this subsection.

(6) EXISTING REGULATIONS.—The provisions of section 158.49 of title 14, Code of Federal Regulations, that permit the commingling of passenger facility fees with other air carrier revenue shall not apply to a covered air carrier.

(7) COVERED AIR CARRIER DEFINED.—In this section, the term “covered air carrier” means an air carrier that files for chapter 7 or chapter 11 of title 11 bankruptcy protection, or has an involuntary chapter 7 of title 11 bankruptcy proceeding commenced against it, after the date of enactment of this subsection.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1113; Pub. L. 103–305, title II, §§203, 204(a)(1), (b), Aug. 23, 1994, 108 Stat. 1582, 1583; Pub. L. 104–264, title I, §142(b)(2), title XII, §1202, Oct. 9, 1996, 110 Stat. 3221, 3280; Pub. L. 104–287, §5(67), Oct. 11, 1996, 110 Stat. 3395; Pub. L. 106–181, title I, §§105(a), (b), 135(a), (b), 151, 152(a), 155(c), Apr. 5, 2000, 114 Stat. 71, 83, 86–88; Pub. L. 108–176, title I, §§121(a)–(c), 122–123(d), 124, Dec. 12, 2003, 117 Stat. 2499–2502; Pub. L. 110–253, §3(c)(1), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §5(a), Sept. 30, 2008, 122 Stat. 3718; Pub. L. 110–337, §1, Oct. 2, 2008, 122 Stat. 3729; Pub. L. 111–12, §5(a), Mar. 30, 2009, 123 Stat. 1458; Pub. L. 111–69, §5(a), Oct. 1, 2009, 123 Stat. 2055; Pub. L. 111–116, §5(a), Dec. 16, 2009, 123 Stat. 3032.)

HISTORICAL AND REVISION NOTES PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40117(a)(1) ..	49 App.:1513(e) (15)(A), (B), (D).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1113(e)(1)–(3), (5)–(15); added Nov. 5, 1990, Pub. L. 101–508, §9110(2), 104 Stat. 1388–357.
40117(a)(2) ..	(no source).	
40117(a)(3) ..	49 App.:1513(e) (15)(C).	
40117(a)(4), (5).	(no source).	
40117(b)(1) ..	49 App.:1513(e)(1).	
40117(b)(2) ..	49 App.:1513(e)(8) (1st sentence).	
40117(b)(3) ..	49 App.:1513(e)(6) (1st sentence).	
40117(c)(1), (2).	49 App.:1513(e) (11)(A)–(C).	
40117(c)(3) ..	49 App.:1513(e) (11)(D), (E) (last sentence).	
40117(d)	49 App.:1513(e)(2), (5).	
40117(e) (1)(A).	49 App.:1513(e) (11)(E) (1st sentence).	
40117(e) (1)(B).	49 App.:1513(e)(13).	
40117(e) (2)(A).	49 App.:1513(e)(6) (last sentence).	
40117(e) (2)(B).	49 App.:1513(e)(3).	
40117(e) (2)(C).	49 App.:1513(e)(4).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1113(e)(4); added Nov. 5, 1990, Pub. L. 101–508, §9110(2), 104 Stat. 1388–357; Oct. 31, 1992, Pub. L. 102–581, §105, 106 Stat. 4877.
40117(f)(1) ...	49 App.:1513(e)(8) (last sentence).	
40117(f)(2), (3).	49 App.:1513(e)(9).	
40117(g)	49 App.:1513(e)(7).	

HISTORICAL AND REVISION NOTES—CONTINUED PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40117(h)	49 App.:1513(e)(12).	
40117(i)	49 App.:1513(e)(10), (14).	

In subsection (a), before clause (1), the text of 49 App.:1513(e)(15)(A) is omitted for clarity and because the terms “air carrier” and “foreign air carrier” are used the first time they appear in each subsection. The text of 49 App.:1513(e)(15)(D) is omitted because the complete name of the Secretary of Transportation is used the first time the term appears in this section. Clauses (2), (4), and (5) are added to avoid repeating the source provisions throughout this section. In clause (3)(D), the words “without regard to” are omitted as surplus.

In subsection (b)(1), the words “bonds and other” are omitted as surplus.

In subsection (b)(2), the word “limit” is omitted as being included in “regulate”.

In subsection (d), before clause (1), the text of 49 App.:1513(e)(5) is omitted as executed. The words “approve an application that an eligible agency has submitted under subsection (c) of this section” are substituted for “grant a public agency which controls a commercial service airport authority to impose a fee under this subsection” for clarity.

In subsection (e)(1)(B), the words “and conditions” are omitted as being included in “terms”.

Subsection (e)(2)(A) is substituted for 49 App.:1513(e)(6) (last sentence) to eliminate unnecessary words.

In subsection (e)(2)(B), the words “a public agency which controls any other airport”, “If a passenger of an air carrier is being provided air service”, and “with respect to such air service” are omitted as surplus.

In subsection (f)(3), the words “financed with” are substituted for “carried out through the use of” for consistency in this section and to eliminate unnecessary words.

In subsection (g), the word “price” is substituted for “rate, fee, or charge” and “rates, fees, and charges” to eliminate unnecessary words.

In subsection (g)(2), the words “Except as provided by subparagraph (C)” and “by means of depreciation, amortization, or any other method” are omitted as surplus.

In subsection (h)(1), the word “agent” is substituted for “agency” to correct an error in the source provisions.

In subsection (i), before clause (1), the words “Not later than May 4, 1991” are omitted as obsolete.

PUB. L. 104–287

This repeals 49:40117(e)(2)(C) to eliminate an executed provision and makes conforming amendments.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (k)(1), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

The date of enactment of this subsection, referred to in subsecs. (l)(6) and (m)(7), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

AMENDMENTS

2009—Subsec. (l)(7). Pub. L. 111–116 substituted “April 1, 2010.” for “January 1, 2010.”

Pub. L. 111–69 substituted “January 1, 2010.” for “October 1, 2009.”

Pub. L. 111–12 substituted “October 1, 2009.” for “April 1, 2009.”

2008—Subsec. (b)(7). Pub. L. 110–337 added par. (7).

Subsec. (l)(7). Pub. L. 110–330 substituted “April 1, 2009” for “September 30, 2008”.

Pub. L. 110-253 substituted “September 30, 2008” for “the date that is 3 years after the date of issuance of regulations to carry out this subsection”.

2003—Subsec. (a)(3)(C). Pub. L. 108-176, § 123(d), substituted “A project for costs” for “for costs” and a period for the semicolon at end.

Subsec. (a)(3)(G). Pub. L. 108-176, § 121(a), added subpar. (G).

Subsec. (a)(4) to (6). Pub. L. 108-176, § 121(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(5). Pub. L. 108-176, § 121(b), added par. (5).

Subsec. (b)(6). Pub. L. 108-176, § 122, added par. (6).

Subsec. (c)(2)(E), (F). Pub. L. 108-176, § 123(a)(1), added subpars. (E) and (F).

Subsec. (c)(3), (4). Pub. L. 108-176, § 123(a)(2)–(4), added par. (3), redesignated former par. (3) as (4), and substituted “may” for “shall” in first sentence of par. (4).

Subsec. (e)(2)(C). Pub. L. 108-176, § 123(c)(1), substituted a semicolon for period at end.

Subsec. (e)(2)(F). Pub. L. 108-176, § 123(c)(2)–(4), added subpar. (F).

Subsec. (I). Pub. L. 108-176, § 123(b), added subsec. (I).

Subsec. (m). Pub. L. 108-176, § 124, added subsec. (m).

2000—Subsec. (a). Pub. L. 106-181, § 151, amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “In this section—

“(1) ‘airport’, ‘commercial service airport’, and ‘public agency’ have the same meanings given those terms in section 47102 of this title.

“(2) ‘eligible agency’ means a public agency that controls a commercial service airport.

“(3) ‘eligible airport-related project’ means a project—

“(A) for airport development or airport planning under subchapter I of chapter 471 of this title;

“(B) for terminal development described in section 47110(d) of this title;

“(C) for airport noise capability planning under section 47505 of this title;

“(D) to carry out noise compatibility measures eligible for assistance under section 47504 of this title, whether or not a program for those measures has been approved under section 47504; and

“(E) for constructing gates and related areas at which passengers board or exit aircraft.

“(4) ‘passenger facility fee’ means a fee imposed under this section.

“(5) ‘passenger facility revenue’ means revenue derived from a passenger facility fee.”

Subsec. (a)(3)(C) to (F). Pub. L. 106-181, § 152(a), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (b)(4). Pub. L. 106-181, § 105(a), added par. (4).

Subsec. (d)(4). Pub. L. 106-181, § 105(b), added par. (4).

Subsec. (e)(2)(D), (E). Pub. L. 106-181, § 135(a), added subpars. (D) and (E).

Subsec. (i)(3). Pub. L. 106-181, § 135(b)(1)–(3), added par. (3).

Subsec. (j). Pub. L. 106-181, § 135(b)(4), added subsec. (j).

Subsec. (k). Pub. L. 106-181, § 155(c), added subsec. (k).

1996—Subsec. (a)(3)(D) to (F). Pub. L. 104-264, § 142(b)(2), inserted “and” at end of subpar. (D), substituted a period for “; and” at end of subpar. (E), and struck out subpar. (F) which read as follows: “in addition to projects eligible under subparagraph (A), the construction, reconstruction, repair, or improvement of areas of an airport used for the operation of aircraft or actions to mitigate the environmental effects of such construction, reconstruction, repair, or improvement when the construction, reconstruction, repair, improvement, or action is necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990, the Clean Air Act, or the Federal Water Pollution Control Act with respect to the airport.”

Subsec. (e)(2)(B) to (D). Pub. L. 104-287 inserted “and” at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as fol-

lows: “for a project the Secretary does not approve under this section before October 1, 1993, if, during the fiscal year ending September 30, 1993, the amount available for obligation under subchapter II of chapter 417 of this title is less than \$38,600,000, except that this clause—

“(i) does not apply if the amount available for obligation under subchapter II of chapter 417 of this title is less than \$38,600,000 because of sequestration or other general appropriations reductions applied proportionately to appropriations accounts throughout an appropriation law; and

“(ii) does not affect the authority of the Secretary to approve the imposition of a fee or the use of revenues, derived from a fee imposed under an approval made under this section, by a public agency that has received an approval to impose a fee under this section before September 30, 1993, regardless of whether the fee is being imposed on September 30, 1993; and”.

Subsec. (g)(4). Pub. L. 104-264, § 1202, added par. (4).

1994—Subsec. (a)(3)(F). Pub. L. 103-305, § 203, added subpar. (F).

Subsec. (d)(3). Pub. L. 103-305, § 204(b), added par. (3).

Subsec. (e)(2)(D). Pub. L. 103-305, § 204(a)(1), added subpar. (D).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-116, § 5(j), Dec. 16, 2009, 123 Stat. 3032, provided that: “The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on January 1, 2010.”

Pub. L. 111-69, § 5(l), Oct. 1, 2009, 123 Stat. 2055, provided that: “The amendments made by this section [amending this section and sections 41743, 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as notes under sections 41731 and 47109 of this title] shall take effect on October 1, 2009.”

Pub. L. 111-12, § 5(j), Mar. 30, 2009, 123 Stat. 1458, provided that: “The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on April 1, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-330, § 5(l), Sept. 30, 2008, 122 Stat. 3719, provided that: “The amendments made by this section [amending this section and sections 41743, 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as notes under sections 41731 and 47109 of this title] shall take effect on October 1, 2008.”

Amendment by Pub. L. 110-253 effective July 1, 2008, see section 3(d) of Pub. L. 110-253, set out as a note under section 9502 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

GUIDANCE

Pub. L. 108-176, title I, § 121(d), Dec. 12, 2003, 117 Stat. 2500, provided that: “The Secretary, in consultation

with the Administrator of the Environmental Protection Agency, shall issue guidance determining eligibility of projects, and how benefits to air quality must be demonstrated, under the amendments made by this section [amending this section].”

ELIGIBILITY OF AIRPORT GROUND ACCESS TRANSPORTATION PROJECTS

Pub. L. 108-176, title I, §123(e), Dec. 12, 2003, 117 Stat. 2502, provided that: “Not later than 60 days after the enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall publish in the Federal Register the current policy of the Administration, consistent with current law, with respect to the eligibility of airport ground access transportation projects for the use of passenger facility fees under section 40117 of title 49, United States Code.”

COMPETITION PLANS

Pub. L. 106-181, title I, §155(a), Apr. 5, 2000, 114 Stat. 88, provided that: “The Congress makes the following findings:

“(1) Major airports must be available on a reasonable basis to all air carriers wishing to serve those airports.

“(2) 15 large hub airports today are each dominated by one air carrier, with each such carrier controlling more than 50 percent of the traffic at the hub.

“(3) The General Accounting Office [now Government Accountability Office] has found that such levels of concentration lead to higher air fares.

“(4) The United States Government must take every step necessary to reduce those levels of concentration.

“(5) Consistent with air safety, spending at these airports must be directed at providing opportunities for carriers wishing to serve such facilities on a commercially viable basis.”

LIMITATION ON STATUTORY CONSTRUCTION OF SUBSECTION (e)(2)(D)

Section 204(a)(2) of Pub. L. 103-305 provided that: “The amendment made by paragraph (1) [amending this section] shall not be construed as requiring any person to refund any fee paid before the date of the enactment of this Act [Aug. 23, 1994].”

§ 40118. Government-financed air transportation

(a) **TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.**—A department, agency, or instrumentality of the United States Government shall take necessary steps to ensure that the transportation of passengers and property by air is provided by an air carrier holding a certificate under section 41102 of this title if—

(1) the department, agency, or instrumentality—

(A) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or

(B) provides the transportation to or for a foreign country or international or other organization without reimbursement;

(2) the transportation is authorized by the certificate or by regulation or exemption of the Secretary of Transportation; and

(3) the air carrier is—

(A) available, if the transportation is between a place in the United States and a place outside the United States; or

(B) reasonably available, if the transportation is between 2 places outside the United States.

(b) **TRANSPORTATION BY FOREIGN AIR CARRIERS.**—This section does not preclude the transportation of passengers and property by a foreign air carrier if the transportation is provided under a bilateral or multilateral air transportation agreement to which the Government and the government of a foreign country are parties if the agreement—

(1) is consistent with the goals for international aviation policy of section 40101(e) of this title; and

(2) provides for the exchange of rights or benefits of similar magnitude.

(c) **PROOF.**—The Administrator of General Services shall prescribe regulations under which agencies may allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

(d) **CERTAIN TRANSPORTATION BY AIR OUTSIDE THE UNITED STATES.**—Notwithstanding subsections (a) and (c) of this section, any amount appropriated to the Secretary of State or the Administrator of the Agency for International Development may be used to pay for the transportation of an officer or employee of the Department of State or one of those agencies, a dependent of the officer or employee, and accompanying baggage, by a foreign air carrier when the transportation is between 2 places outside the United States.

(e) **RELATIONSHIP TO OTHER LAWS.**—This section does not affect the application of the antidiscrimination provisions of this part.

(f) **PROHIBITION OF CERTIFICATION OR CONTRACT CLAUSE.**—(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)), except that it shall not include a contract for the transportation by air of passengers.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1116; Pub. L. 103-355, title VIII, §8301(h), Oct. 13, 1994, 108 Stat. 3398; Pub. L. 104-287, §5(68), Oct. 11, 1996, 110 Stat. 3395; Pub. L. 104-316, title I, §127(d), Oct. 19, 1996, 110 Stat. 3840; Pub. L. 105-277, div. G, subd. A, title XII, §1225(h), title XIII, §1335(p), title XIV, §1422(b)(6), Oct. 21, 1998, 112 Stat. 2681-775, 2681-789, 2681-793; Pub. L. 108-176, title VIII, §806, Dec. 12, 2003, 117 Stat. 2588.)

HISTORICAL AND REVISION NOTES PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40118(a)	49 App.:1517(a), (b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1117; added Jan. 3, 1975, Pub. L. 93-623, §5(a), 88 Stat. 2104; re-stated Feb. 15, 1980, Pub. L. 96-192, §21, 94 Stat. 43.
	49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704.
40118(b)	49 App.:1517(c).	